

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6429 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ADARSH KELAVNI MANDAL

Versus

GUJARAT SECONDARY EDUCATION BOARD

Appearance:

MR MUKESH R SHAH for Petitioner

MR UR BHATT, AGP, for respondents

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 20/04/2001

ORAL JUDGEMENT

1. Rule. Mr. U.R. Bhatt, learned AGP, appears and waives service of rule on behalf of the respondents.
2. On a joint request of learned counsel for the parties the matter is taken up for final hearing today.
3. The petitioner is a Trust which was desirous of establishing a secondary school for girls at

Virol, District Panchmahals. The necessary application was made to the designated authority for this purpose. This application came to be rejected by the impugned order at Annexure-B to the petition. The petitioner Trust therefore filed an appeal under section 31 of the Gujarat Secondary Education Act. This appeal came to be decided by the State Government viz. Deputy Secretary (Appeals), Education Department. The said order of rejection of the appeal is at Annexure-E to the petition.

4. On a plain reading of the impugned order at Annexure-E, it is found that the same has been passed in a very casual manner and without adequate application of mind. The impugned appellate order has taken the population of Virol at 1100, whereas the competent authority in the order at Annexure-P to the petition has considered the population to be 3000. There is absolutely no explanation as to this discrepancy.

5. It is common ground that there is no secondary school in this village and certainly no girls' school.

6. So far as the accommodation for the school is concerned, the original proposal to accommodate the school consisted of a private building wherein there were six rooms, which however has thereafter been substituted by another and larger building. Admittedly the map in respect of the new building was before the appellate authority. This aspect has been side-stepped by the appellate authority merely by observing that this structure has not been looked at and/or the map inquired into. The appellate authority could certainly have looked into the matter, and/or made necessary inquiries and/or called upon the applicant to produce better particulars in order to satisfy itself as to whether the requirements of this school would be met or satisfied by the new building in which the school was proposed to be housed. The appellate authority has accepted that a play ground for the school is available as also adequate facilities for drinking water, toilet, etc are available. As against this, the observation is that there is absence of appropriate sanitary/hygiene facilities. It is difficult to understand how this last finding could have been arrived at when the appellate authority itself has observed that the new building has not been inspected.

6. Another ground sought to be held out against the applicant is that the balance of funds available with the applicant Trust is only Rs.35000/- while noting that the bank balance on 2nd February 1999, which is the relevant point of time when the application was made, was in

excess of Rs.50000/- (the qualifying amount) and stood at Rs.62380/-. There is no provision pointed out that the qualifying amount of bank balance must be maintained constantly and on a day-today basis by the petitioner until the appeal is decided. Prima facie the qualifying amount is required to be established on the date of the application.

7. In view of the aforesaid situation, it appears that the impugned order passed by the appellate authority has been passed in a most casual manner, and cannot be accepted. Consequently the appellate order at Annexure-E to the petition is quashed and set aside and the case is remanded back to the said appellate authority for reconsideration and a fresh decision on merits in accordance with law, in the light of the above said observations. Rule is made absolute to the aforesaid extent with no order as to costs.

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